200680-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re Paul H. King, Lawyer (Bar No. 7370).	Supreme Court No. Public No. 05#00118 ASSOCIATION'S PETITION FOR INTERIM SUSPENSION (ELC 7.2(a)(2))

As required by Rule 7.2(a)(2) of the Rules for Enforcement of Lawyer Conduct (ELC), the Washington State Bar Association (Association) petitions this Court for an order suspending Respondent Paul H. King from the practice of law during the remainder of the disciplinary proceedings against him. This petition is based on the Disciplinary Board Order Adopting Hearing Officer's Decision filed February 2, 2009. The Disciplinary Board unanimously recommended that Respondent be disbarred.

PROCEDURAL BACKGROUND

On May 8, 2007, the Association filed a Formal Complaint in this matter. The disciplinary hearing took place on April 28 – May 1, 2008 and on May 12, 2008 before Hearing Officer David M. Schoeggl. The Findings, Conclusions, and Hearing Officer's Recommendation were filed

on September 19, 2008.[1] The Hearing Officer recommended that Respondent be disbarred. On February 2, 2009, the Disciplinary Board unanimously adopted the Findings, Conclusions, and Hearing Officer's Recommendation.[2] On February 16, 2009, Respondent filed a Notice of Appeal to this Court.[3]

On December 16, 2008, in a separate matter,[4] the Association filed a Formal Complaint under ELC 7.1(c)(1) based on Respondent's conviction for Mail Fraud,[5] a felony in violation of Title 18, United States Code, Section 1341 (18 U.S.C. § 1341). On January 6, 2009, this Court entered an order suspending Respondent from the practice of law under ELC 7.1(e)(1).[6] On March 6, 2009, Respondent was sentenced to a ten-month term of imprisonment.[7] He is currently imprisoned at the Federal Detention Center (FDC) in SeaTac, Washington.

NATURE OF MISCONDUCT WARRANTING INTERIM SUSPENSION

This case concerns the misconduct Respondent committed

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[1] Appendix A.

[2] Appendix B.

[3] Supreme Court No.200,681-7.

[4] Public No. 08#00096.

[5] United States of America v. Paul H. King, United States District Court, Western District of Washington, Case No. 2:08-cr-00263-RHW-1.

[6] Supreme Court No.200,660-4.

[7] Docket #32, United States of America v. Paul H. King, United States District Court, Western District of Washington, Case No. 2:08-cr-00263-RHW-1.

following his third disciplinary suspension.[8] Respondent failed to notify his client of the suspension, continued to engage in the practice of law, falsely represented that another lawyer had substituted in his place, and submitted a sworn declaration falsely stating that he had discontinued the practice of law. After his client learned of the suspension and filed a grievance, Respondent threatened and harassed him with a frivolous complaint. Respondent failed to respond promptly to Disciplinary Counsel's requests for information, refused to appear for his deposition on multiple occasions, filed frivolous motions calculated to obstruct and delay the investigation, and disobeyed multiple orders denying those motions. Following those acts of misconduct, Respondent continued his campaign of obstruction and delay throughout the disciplinary proceeding.

ARGUMENT

When the Board enters a decision recommending disbarment, disciplinary counsel must file a petition for the respondent's suspension during the remainder of the proceeding. ELC 7.2(a)(2).[9] The respondent must be suspended absent an affirmative showing that the respondent's

[8] Respondent was suspended by this Court for six months on February 12, 2002 and for two years on May 8, 2002. On March 9, 2005, this Court imposed reciprocal discipline based on a three-year suspension imposed by the United States District Court for the Western District of Washington.

[9] The rule provides that a petition need not be filed if the Board's decision is not appealed, but it does not provide an exception for a lawyer such as Respondent who is currently suspended.

continued practice of law will not be detrimental to the integrity and standing of the bar and the administration of justice, or contrary to the public interest. Id. It is hard to imagine any circumstances in which the continued practice of law by a thrice-suspended convicted felon following a unanimous Disciplinary Board recommendation of disbarment would not be detrimental to the integrity and standing of the bar and the administration of justice, and contrary to the public interest. If there are such circumstances, they are not present here.

CONCLUSION

Under ELC 7.2(a)(2), the Association asks the Court to (1) issue an Order requiring Respondent Paul H. King to show cause why this petition should not be granted and then (2) issue an order suspending Respondent from the practice of law during the remainder of this proceeding.

DATED THIS 12th day of March, 2009

Respectfully submitted,

WASHINGTON STATE BAR ASSOCIATION

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APPENDIX A

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re Paul H. King, Lawyer (Bar No. 7370).	Public No. 05#00118 FINDINGS, CONCLUSIONS, AND HEARING OFFICER'S RECOMMENDATION

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), a hearing was held before the undersigned Hearing Officer from April 28 through May 1, 2008, and on May 12, 2008. Disciplinary Counsel Scott G. Busby and Linda B. Eide appeared at the hearing for the Washington State Bar Association (the WSBA). Respondent Paul H. King appeared at the hearing on all days except May 12, 2008, when he participated by telephone.

I. FORMAL COMPLAINT

The Formal Complaint filed by Disciplinary Counsel charged Respondent with the following counts of misconduct:[1]

Count 1: By failing to notify Mr. Rahrig and/or opposing counsel of his March 9, 2005

[1] The RPC were amended effective September 1, 2006. All references herein are to the RPC in effect at the time of the alleged misconduct.

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suspension from the practice of law, Respondent violated RPC 8.4(*l*) (through violation of a duty imposed by ELC 14.1).

Count 2: By informing his opposing counsel that he was merely "taking a leave" when in fact he had been suspended from the practice of law, and/or by falsely representing that lawyer John Scannell had substituted for him, Respondent violated RPC 8.4(c).

Count 3: By submitting a declaration in an official proceeding that contained materially false statements that he knew to be false, Respondent violated RPC 8.4(b) (by committing perjury in the first degree, in violation of RCW 9A.72.020, and false swearing, in violation of RCW 9A.72.040), and/or RPC 8.4(c), and/or RPC 8.4(*l*) (through violation of a duty imposed by ELC 14.3).

Count 4: By continuing to engage in the practice of law after the March 9, 2005 order of suspension, and/or by failing to take the steps necessary to avoid any reasonable likelihood that anyone would rely on him as a lawyer authorized to practice law, Respondent violated RPC 5.5(e), and/or RPC 8.4(b) (through violation of RCW 2.48.180), and/or RPC 8.4(*l*) (through violation of a duty imposed by ELC 14.2), and/or RPC 8.4(j).

Count 5: By delivering a summons and a complaint with a fictitious cause number to Mr. Rahrig, and/or by asserting claims and/or issues therein that were frivolous, Respondent violated RPC 3.1, and/or RPC 4.4, and/or RPC 8.4(c), and/or RPC 8.4(d).

Count 6: By using the summons and complaint as a pretext for a deferral request intended to obstruct and delay Disciplinary Counsel's investigation of Mr. Rahrig's grievance, Respondent violated RPC 3.1, and/or RPC 4.4, and/or RPC 8.4(c), and/or RPC 8.4(d).

Count 7: By attempting to induce Mr. Rahrig to withdraw his grievance by threatening him with a frivolous lawsuit, Respondent violated RPC 8.4(a) and/or RPC 8.4(d).

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Count 8: By failing to promptly respond to requests for a response to Mr. Rahrig's grievance, Respondent violated RPC 8.4(d) and/or RPC 8.4(*l*) (through violation of a duty imposed by ELC 5.3).

Count 9: By avoiding service of a deposition subpoena, and/or by failing to appear for his deposition on multiple occasions, and/or by failing to produce any of the documents called for by the subpoena duces tecum, Respondent violated RPC 8.4(d) and/or RPC 8.4(*l*) (through violation of duties imposed by ELC 5.3 and 5.5).

Count 10: By filing frivolous motions intended to obstruct and delay an investigation, and/or by disobeying orders denying those motions, Respondent violated RPC 3.1, and/or RPC 4.4, and/or RPC 8.4(d), and/or RPC 8.4(*l*) (through violation of duties imposed by ELC 5.3 and 5.5).

Based on the pleadings in the case, the testimony and exhibits at the hearing, the Hearing Officer makes the following:

II. FINDINGS

Any findings under this section that are later deemed to be Conclusions that should more properly be in Section III should be treated as such. *Local Union 1296, Int'l Ass'n of Firefighters v. City of Kennewick*, 86 Wash.2d 156, 161-62, 542 P.2d 1252 (1975).

A. Findings of Fact Concerning Actions On Or Before May 31, 2005.

1. Respondent was admitted to the practice of law in the State of Washington on May 13, 1977.

2. On February 12, 2002, the Washington Supreme Court entered an Order suspending Respondent from the practice of law in the State of Washington for six months effective April 25, 2002.

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3. On May 8, 2002, the Washington Supreme Court entered an Order suspending Respondent from the practice of law in the State of Washington for two years effective April 25, 2002.

4. On August 13, 2002, the United States District Court for the Western District of Washington entered an Order suspending Respondent from the practice of law before that court for three years effective April 25, 2002.

5. On May 11, 2004, Respondent was returned to active status with the WSBA.

6. On October 21, 2004, the Supreme Court of Washington ordered Respondent to show cause under ELC 9.2(c) why the discipline imposed by the United States District Court on August 15, 2002 should not reciprocally be imposed

7. On March 9, 2005, the Supreme Court of Washington entered an Order suspending Respondent from the practice of law in the State of Washington until the date the federal court suspension expired. However, the order incorrectly listed this date as August 13, 2005 due to a clerical error by the Court. Respondent moved promptly to correct the error, but his motion was not heard until June 7, 2005. On that day, the Court corrected the error and ruled that the suspension would expire immediately.

8. Respondent was reinstated by the WSBA effective June 27, 2005.

9. In approximately March 2004, Seattle resident Kurt Rahrig contacted Respondent's legal assistant, Roger Knight, about a potential claim he might have against Alcatel USA, Mr. Rahrig's former employer.

10. On June 3, 2004, June 11, 2004, June 14, 2004, June 15, 2004, and July 2, 2004, Respondent and/or his legal assistant, Roger Knight, sent emails to Mr. Rahrig indicating they were researching the viability of his claim against Alcatel. The "from" address of these emails

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is "Actionlaw or "actionlaw@w-link.net," which Mr. Rahrig understood to be email addresses used by Respondent. Respondent testified that these addresses were his office address that that emails sent from that address were sent by him or by others acting under his supervision 70% - 90% of the time.

11. Mr. Rahrig and Respondent signed a fee agreement dated September 3, 2004, which stated that Mr. Rahrig was retaining "John Scannell, Actionlaw.net, and Paul H. King, lawyer" in connection with his claim against Alcatel. However, according to a March 11, 2008 declaration submitted by Mr. Scannell in this matter, he and Respondent do not share the same law office, he is not a partner of Respondent's, he was never consulted regarding the Rahrig matter, he did not perform any legal services for Mr. Rahrig or agree to represent Mr. Rahrig, and he did not associate on this matter with Respondent.

12. Between September 2004 and December 2004, Respondent and/or his legal assistant acting under his direction conducted legal research into Mr. Rahrig's claim, gave Mr. Rahrig legal advice about the claim, drafted a complaint, and retained local counsel in Virginia to assist with the filing of the complaint in a Virginia state court.

13. The Virginia local counsel, Mr. Jay Levit, testified at the hearing that he understood Respondent to be the lead lawyer representing Mr. Rahrig in *Rahrig v. Alcatel* and that this understanding existed from the time Mr. Levit was first contacted in the fall of 2004 until approximately May 26, 2005 when Mr. Levit learned that Respondent was suspended from the practice of law. This understanding was based on numerous telephone conversations and emails between Respondent and his assistant, Mr. Knight, and Mr. Levit. Mr. Levit testified that Respondent directed the strategy of the case and had most of the client contact throughout this period.

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14. The lawsuit, *Rahrig, et. al. v. Alcatel Networks, et. al.*, was removed by the defendant to federal court and assigned USDC Eastern District of Virginia Case No. 1:104-cv-01545-GBL-TCB, Respondent did not apply for *pro hac vice* admission in *Rahrig v. Alcatel.*

15. Respondent did not notify Mr. Rahrig, Mr. Levit, or the attorneys for Alcatel in *Rahrig v. Alcatel* of his March 9, 2005 suspension from the practice of law between the time the suspension order was entered and late May, 2005, when these individuals learned of the suspension from other sources.

16. An email was sent on March 9, 2005 at 8:04 p.m. from the email address actionlaw@w-link.net to Alcatel's attorneys in *Rahrig v. Alcatel* stating "Please have pleadings addressed to Actionlaw.net John Scannell Attorney from now on. Respondent is taking a leave. Same address as before."

17. Prior to this email, the attorneys for Alcatel had been sending Respondent copies of pleadings filed in *Rahrig v. Alcatel* (and including Respondent's office on service declarations) despite the fact Respondent was not admitted *pro hac vice.* After this email was sent, the attorneys for Alcatel sent the pleadings to Mr. Scannell rather than Respondent.

18. On at least two documented occasions subsequent to the March 9, 2005 email, documents sent to Mr. Scannell by Alcatel's lawyers came into Respondent's possession.

19. Mr. Levit and Mr. Rahrig both testified that they were not sent copies of the March 9, 2005 email and did not become aware of its existence, or of the fact that counsel for Alcatel was serving Mr. Scannell instead of Respondent, until sometime after May 26, 2005.

20. At the hearing, Respondent testified he did not believe he wrote the March 9, 2005 email. However, if he did not write this email, it had to have been written either by his legal assistant, Mr. Roger Knight, or by the attorney representing him in connection with the

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March 9, 2005 suspension, Mr. John Scannell. Both were acting under Respondent's direction in connection with this matter at the time the email was written.

21. Between March 9, 2005 and May 26, 2005, Respondent did not take a leave as regards the *Rahrig v. Alcatel* case, but rather continued acting as the lead lawyer for Mr. Rahrig on the case.

22. No evidence was presented of any written or oral retraction of the statements made in the March 9, 2005 email.

23. On March 16, 2005, Respondent signed a Request for Change of Address of Boxholder Information Needed for Service of Legal Process relating to a potential witness in *Rahrig v. Alcatel* named Edgar Velzaco. The document identifies Respondent as "Attorney" and identified "Alcatel" as a party to litigation pending in "US District Virginia."

24. On March 19, 2005, April 4, 2005, and April 13, 2005, Respondent or an attorney or paralegal acting under his direction sent emails relating to legal strategy in *Rahrig v. Alcatel*, including arranging for a Rule 37 conference of counsel, discussing a possible motion to compel, and discussing summary judgment strategy including the need to educate the judge about "our version of the case."

25. On March 19, 2005, March 25, 2005, May 1, 2005, May 3, 2005, and May 6, 2005, Respondent sent emails to Mr. Rahrig providing legal advice, including the need to draft a document production request, a potential summary judgment motion, and regarding potential privilege and work product objections to discovery requests.

26. On March 21, 2005, March 22, 2005, March 29, 2005, April 24, 2005, April 26, 2005, April 29, 2005, May 4, 2005, and May 6, 2005, Mr. Rahrig sent emails to Respondent indicating Mr. Rahrig believed Respondent was acting as Mr. Rahrig's attorney.

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27. On March 28, 2005, Mr. Levit sent an email to Respondent discussing legal strategy in *Rahrig v. Alcatel* and asking for Respondents thoughts on this legal strategy.

28. On March 30, 2005 and May 20, 2005, Mr. Rahrig had meetings with Respondent at his law office. During these meetings legal strategy was discussed.

29. In late March 2005, draft answers were prepared by or on behalf of Mr. Rahrig to Alcatel's written discovery requests. Interrogatory No. 19 asked for the identity of persons "who assisted or participated in the preparation of the answers to these interrogatories." The draft answer starts with the statement "PAUL – HOW SHOULD THIS BE ANSWERED." Below this is Respondent's name listed with the names of Mr. Levit and Mr. Mark Maurin (apparently a part-time paralegal in Respondent's office). On March 31, 2005, Respondent sent an email stating "I changed a few things everything else looks good, we can supplement this. My changes were minor about hiring me." The final version of the answers listed only Mr. Levit and Mr. Maurin in the answer to Interrogatory No. 19.

30. On April 18, 2005, Respondent sent an email to Mr. Levit stating that he had made "one change" to a draft Rule 30(b)(6) deposition notice being prepared to serve on Alcatel.

31. On April 21, 2005, Mr. Knight, Respondent's legal assistant, sent an email to Mr. Levit regarding the draft Rule 30(b)(6) deposition notice, stating that Respondent "is of the opinion that the only question we really need to ask is if there was any way the Windfall Clause could be legitimately exercised to retroactively affect commissions earned on the transactions already completed."

32. On April 25, 2005, Mr. Knight sent an email concerning potential depositions on written questions in the *Rahrig v. Alcatel* case stating, "Paul says we should not do one for Ed

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Mamon because he is touchy and we have what we need from him. Paul suggests that we do a Dep on Written ? for Bill Smallshaw." Mr. Smallshaw was a potential witness in *Rahrig v. Alcatel*

33. On April 26, 2005, Mr. Levit sent a letter to Respondent stating "the purpose of this letter is to memorialize our fee agreement . . . " The letter went on to discuss Respondent's contingency fee agreement with Mr. Rahrig and how that contingency fee would be divided between Respondent and Mr. Levit's firm in the event of a recovery by Mr. Rahrig. Mr. Levit also sent an email to Respondent on May 13, 2006 referencing a discussion between Respondent and Mr. Levit regarding the contents of the fee agreement and Respondent's intent to sign it. At some point between April 26, 2005 and May 25, 2005, Respondent signed the letter and returned it to Mr. Levit.

34. On April 28, 2005, Mr. Rahrig sent an email to Mr. Knight concerning a "proposed R[equest] F[or] P[roduction] stating "Let's get this off to Jay [Levit] and Paul [King, Respondent] for their approval."

35. On May 5, 2005, Mr. Knight sent an email concerning "Rahrig v. Alcatel RFP's" stating that "My revisions are in blue with a few ideas by Paul written in purple."

36. On May 26, 2005, Mr. Knight sent an email regarding "Smallshaw dep on written ?s" that stated "Paul played with the Smallshaw dep on written questions and I prettied up his effort a little.".

37. On May 31, 2005, after learning from Mr. Levit that Respondent had been suspended from the practice of law, Mr. Rahrig dismissed Respondent as his lawyer. Later that day, Mr. Rahrig received a responsive email from Mr. Knight's email address that was either drafted by Respondent or prepared at his direction. This email stated that "I did not do anything

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except work to advance your case and get Jay Levit to represent you in Virginia. John Scannell is still on the fee agreement and he is still Active in his membership in the Bar and can still practice law." The email went on to offer an opinion about "how expansive and ultimately silly the concept of 'practicing law without a license' is."

38. Also on May 31, 2005, Mr. Rahrig received another email from Mr. Knight's email address stating that Respondent "was not the attorney on the case. He transferred the case to Mr. Scannekk [sic] on March 9, 2005."

39. Mr. Rahrig testified that he (Mr. Rahrig) had never had any contact with Mr. Scannell between March 9, 2005 and May 31, 2005, that he considered Respondent and not Mr. Scannell to be his lawyer throughout the period. This testimony is consistent with the statements in Mr. Scannell's March 11, 2008 declaration filed in this matter.

B. Findings of Fact Applicable To Count 1.

40. Findings of Fact 1 – 39 are incorporated herein by reference.

41. Respondent failed to notify Mr. Rahrig, local Virginia counsel Mr. Levit, or opposing counsel in the *Rahrig v. Alcatel* matter of Respondent's March 9, 2005 suspension from the practice of law by the Washington Supreme Court, of Respondent's inability to act as Mr. Rahrig's lawyer, or of the reasons for this inability.

42. Between March 9, 2005 and May 31, 2005, Respondent failed to advise Mr. Rahrig to seek legal advice elsewhere.

C. Findings of Fact Applicable To Count 2

43. Findings of Fact 1 – 39 are incorporated herein by reference.

44. On March 9, 2005 Respondent or a person working under his direction informed opposing counsel in *Rahrig v. Alcatel* that Respondent was taking a leave. Respondent did not

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so inform his client Mr. Rahrig or local counsel Mr. Levit.

45. As regards *Rahrig v. Alcatel,* Respondent did not take a leave from the practice of law during the period March 9, 2005 through May 31, 2005.

46. On March 9, 2005, Respondent or a person working under his direction asked opposing counsel in *Rahrig v. Alcatel* to send pleadings to Mr. John Scannell even though Mr. Scannell was not Respondent's law partner and did not represent Mr. Rahrig. Respondent did not notify Mr. Rahrig or Mr. Levit of this request.

D. Findings of Fact Applicable To Count 3.

47. Findings of Fact 1 – 39 are incorporated herein by reference.

48. On March 25, 2005, Respondent signed a declaration captioned "WSBA In Re Compliance With 8.3" and submitted it to the WSBA. The declaration stated in part that "[On or before March 9, 2005,] I wrapped up my affairs and closed the practice. I had no active clients at the close of March 9, 2005, the due date." These statements were false and were known by Respondent to be false at the time they were made.

E. Findings of Fact Applicable To Count 4.

49. Findings of Fact 1 – 39 are incorporated herein by reference.

50. Between March 9, 2005 and May 26, 2005, Respondent directed the legal strategy of Mr. Rahrig in the *Rahrig v. Alcatel* case, provided Mr. Rahrig legal advice in connection with that case, and actively participated in ongoing litigation in that case.

51. Between March 9, 2005 and May 26, 2005, Respondent did not take steps in connection with his representation of Mr. Rahrig in *Rahrig v. Alcatel* to avoid any reasonable likelihood that anyone would rely on him as a lawyer authorized to practice law. Instead, Respondent took affirmative steps during this period that reasonably would have and did cause

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Mr. Rahrig and Mr. Levit to rely on him as a lawyer authorized to practice law.

52. Respondent testified that he and Mr. Knight made a call to Mr. Chris Sutton on the WSBA Ethics Hotline[2] and was told that he would not be engaging in the unauthorized practice of law if he transferred Mr. Rahrig's representation in *Rahrig v. Alcatel* to a competent Virginia attorney, and that he relied on this advice. However, Respondent also testified that if he left something out of his hypothetical question to Mr. Sutton, he would "have to accept responsibility for that."

53. Respondent testified that when he "transferred" the case to Mr. Levit in November 2004, he continued to be involved only to provide Mr. Levit with background information. However, Respondent also testified that he shared his views with Mr. Rahrig in post-March 9, 1995 meetings concerning matters that had occurred in the case after March 9, 2005.

54. Respondent knew that his activities in *Rahrig v. Alcatel* after March 9, 2005 constituted the practice of law. This is shown by the following:

a. Prior to March 9, 2005, most of the emails Respondent sent in connection with *Rahrig v. Alcatel* clearly identified him as the author. Between March 9, 2005 and May 31, 2005, most of Respondent's emails to Mr. Rahrig and Mr. Levit did not specifically list Respondent as the author or otherwise mention his name. Respondent testified at the hearing that he may not have authored some of these emails. However, the content and context of these emails clearly demonstrates that most or all of the emails conveying legal advice were sent by Respondent or by others (such as Mr. Knight) working under his direction.

b. In addition to making contemporary representations (contradicted by both Mr. Rahrig and Mr. Scannell) that Mr. Scannell represented Mr. Rahrig, Respondent at times testified at the hearing that he believed Mr. Scannell was acting as Mr. Rahrig's lawyer. Respondent also testified and stated at times that control of the

[2] Such calls are inadmissible under APR 19(e)(5). However, this rule was not in effect at the time the call was allegedly made, and for that reason testimony concerning it was admitted at the hearing over Disciplinary Counsel's objection.

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case was transferred to Mr. Levit in late 2004 or early 2005. These two claims are inconsistent. If Respondent believed he had transferred the case to Mr. Levit, there would have been no reason to attempt to create the appearance Mr. Scannell was involved.

c. Respondent testified at the hearing that although he was involved in discussions regarding *Rahrig v. Alcatel* after March 9, 2005, he made it clear to everyone that Mr. Levit was the final decision-maker. This testimony was directly contradicted by Mr. Levit's testimony that Respondent was the final decision-maker. The testimony of Mr. Levit, a disinterested third party, on this point is more credible than Respondent's.

d. Respondent falsely alleged in a complaint he prepared against Mr. Rahrig in June 2005 that he had withdrawn from Mr. King's representation as of March 9, 2005.

55. Respondent testified that during the relevant period, he "got into a dispute with Scannell" and that he and Mr. Scannell were "on the outs" and were not on speaking terms. This, together with the March 9, 2005 email and the other evidence presented, suggests that while Respondent may have planned at some point to transfer the *Rahrig v. Alcatel* case to Mr. Scannell during the period of his suspension, he decided instead to keep the case himself, conceal the suspension from his client and co-counsel, and attempt to continue acting as an attorney in the matter without creating a written record that he was doing so.

F. Findings of Fact Concerning Actions On Or After May 31, 2005.

56. On May 31, 2005, Mr. Rahrig filed a grievance against Respondent.

57. On June 1, 2005, Mr. Rahrig sent an email to Respondent and Mr. Knight that stated:

> Paul, Roger;
>
> Per my instructions – send over my file via Fed Ex or UPS promptly.
>
> DO NOT come to my house. DO NOT send any representative or anyone from your office or anyone at your request to my house. I only expect my files to arrive via Fed Ex or UPS.

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Furthermore, DO NOT call, email or write or communicate with me or call my home.

I request that ALL correspondence from your or Actionlaw.net to be directed to Jay Levit. I also request that ALL correspondence be in sent either via LETTER or FAX to Jay Levit. You have his fax number and mailing address. FURTHER MORE ALL LETTERS AND FAX CORRESPONDENCE WITH JAY LEVIT MUST BE DATED AND CLEARLY SIGNED.

58. On June 2, 2005, Disciplinary Counsel sent Respondent a request that Respondent provide a response to the grievance within two weeks of the date of the letter.

59. On or about June 21, 2005, Respondent sent a memorandum to Disciplinary Counsel. The memorandum stated: "I will need the full 30 days to answer the complaint adequately" and that "I would ask your forbearance on this matter."

60. On July 6, 2005, Disciplinary Counsel sent Respondent a letter stating that he must file a response on or before July 19, 2005 and that if he did not Disciplinary Counsel would subpoena him for a deposition.

61. On or about July 18, 2005, Respondent prepared a Summons and Complaint for a lawsuit captioned *Paul H. King and Roger W. Knight v. Kurt Rahrig, et. al.* The Complaint listed a cause number not assigned to any case, and the Summons did not list a cause number. An attempt was made to serve this summons and complaint on Mr. Rahrig sometime between July 18, 2005 and July 26, 2005.

62. Mr. Rahrig received the summons and complaint, and retained attorney Alan Funk to represent him. Mr. Rahrig paid Mr. Funk $615 in defense costs.

63. On or about July 22, 2005, Respondent sent a Memorandum to the WSBA Disciplinary Counsel requesting a deferral of the investigation into Mr. Rahrig's grievance due to the existing of the *King v. Rahrig* lawsuit.

64. Respondent never filed the King v. Rahrig lawsuit. Respondent testified that he

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did not pursue the suit against Mr. Rahrig because *Rahrig v. Alcatel* was dismissed on summary judgment in late summer 2005 so that there was no contingency fee payable.

65. On August 16, 2005, the WSBA Chief Disciplinary Counsel denied Respondent's deferral request. On September 15, 2005, Respondent requested a review of this decision.

66. Respondent filed a one-page response to Mr. Rahrig's grievance dated September 23, 2005 that was received by the WSBA on September 26, 2005.

67. On October 12, 2005, WSBA Disciplinary Counsel issued a subpoena duces tecum under ELC 5.5 commanding Respondent to appear and produce documents at a deposition on November 2, 2005. A WSBA investigator attempted to serve this subpoena on Respondent, but was not successful.

68. On November 3, 2005, Disciplinary Counsel issued a second subpoena duces tecum, commanding Respondent to appear and produce documents at a deposition on November 22, 2005. Respondent was served with this subpoena on November 10, 2005.

69. On November 21, 2005 Respondent filed a Motion for Protective Order with the WSBA concerning his deposition subpoena. The motion sought to have the subpoena stricken on the ground that the WSBA did not have jurisdiction over Mr. Rahrig's grievance because it involved a case in Virginia. The motion also sought to "suppress" deposition testimony of Mr. Maurin because Respondent had not been given prior notice of Mr. Maurin's deposition.

70. Mr. Maurin's deposition testimony was not submitted or offered in this proceeding.

71. Respondent did not appear for his deposition on November 22, 2005.

72. On approximately December 13, 2005, Respondent filed a Motion for

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Clarification with the Washington Supreme Court seeking to retroactively amend the Court's June 7, 2005 order to change the end date for Respondent's suspension from June 7, 2006 to April 25, 2005, the same date the Western District of Washington suspension order ended. This motion was denied on January 12, 2006.

73. Respondent's November 21, 2005 motion, was denied by the Disciplinary Board Chair on June 6, 2006.

74. On June 13, 2006, Disciplinary Counsel sent Respondent a letter setting the deposition for June 28, 2006. At the request of Mr. Knight on behalf of Respondent, the deposition was rescheduled for July 20, 2006.

75. Respondent sent Disciplinary Counsel a letter dated July 19, 2006 (received by the WSBA on July 20, 2006) in which he stated he would be filing a "motion to terminate" the deposition on several grounds, including that his attorney, Mr. Scannell, was not sent a copy of the letter setting the deposition, that the deposition should take place in Kitsap County because Respondent now lived there, and because he had "not received any notifications of prior correspondence and rulings on any previous protective orders from the WSBA or you."

76. On July 20, 2006, Respondent filed a Motion to Terminate Deposition of Paul King, Motion to Quash Subpoena. The motion was on Respondent's pleading paper and signed by him.

77. The motion listed eleven issues. Principally, it argued that Respondent should not be required to give a deposition without Mr. Scannell present due to the potential for inadvertent breaches of the attorney-client privilege between Respondent and Mr. Scannell. In addition, the motion contended that Respondent could only be deposed in Kitsap County, and it suggested that Respondent might not have been properly served with certain orders previously

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entered. The motion also argued that Respondent needed additional time to retain an attorney experienced in Bar disciplinary matters.

78. Mr. Scannell has never filed a Notice of Appearance in this matter on behalf or Respondent.

79. Respondent failed to appear for the July 20, 2006 deposition, and he failed to produce any of the documents called for by the subpoena duces tecum.

80. Respondent's motion was denied by the Disciplinary Board Vice Chair in an order dated August 16, 2006, and Respondent was ordered to allow his deposition to be taken within 10 days at the WSBA offices.

81. On August 25, 2006, Respondent filed a "Motion to Set Aside or Stay Order." The motion contended that the August 16, 2006 Order was invalid under ELC 10.8 because it had been decided by the Disciplinary Board Vice-Chair rather than the Chief Hearing Officer.

82. Also on August 25, 2006, Respondent went to the WSBA offices. Later that day, he sent a Memorandum to Disciplinary Counsel indicating that he "will send by regular mail, the documents we have left on the case." The memorandum also stated that Respondent had to leave town, but would be "back next week." Finally the memorandum stated that Respondent did not "maintain a practice for the public."

83. Also on August 25, 2006, Disciplinary Counsel sent a letter to Respondent informing him that Respondent's deposition would resume on September 5, 2006.

84. Mr. Knight sent Disciplinary Counsel a fax dated September 1, 2006 stating that Respondent "has left town for the holiday and is not expected back until after the 5th of September. His attorney Mr. Scannell is not available either." Respondent failed to appear for the September 5, 2006 deposition, and he failed to produce any of the documents called for by

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the subpoena duces tecum.

85. Respondent's Motion to Set Aside or Stay Order was denied on September 21, 2006 on the ground that ELC 10.8 did not apply since a formal complaint had not yet been filed.

86. On October 2, 2006, Mr. Knight sent Disciplinary Counsel an email stating that Respondent "is out of town and asking that any correspondence be sent to Respondent's P.O. Box in Seattle." The email also stated "Please do not schedule any actions until he returns to Seattle."

87. On January 5, 2007, a review committee of the WSBA Disciplinary Board entered an order directing that a hearing should be held on the allegations in Mr. Rahrig's grievance.

88. On January 9, 2007, Respondent filed a motion to vacate this order on the ground that only two of the three members of the review committee were present when the order was made. On February 7, 2007, the Disciplinary Board Chair denied this motion.

89. On February 9, 2007, Respondent filed a motion for reconsideration of the denial of this motion, arguing in part that he had not been able to file a timely reply because his legal assistant, Mr. Knight, had not been able to locate a copy of the 1876 version of Robert's Rules of Order. The motion for reconsideration was denied on February 14, 2007, by the Chair of the WSBA Disciplinary Board.

90. On February 21, 2007, Respondent filed a Motion to Vacate the February 14, 2007 order denying his reconsideration motion, arguing that order was invalid because it had not been considered by at least seven members of the Disciplinary Board.

91. On March 12, 2007, Respondent filed a Notice of Unavailability indicating he would be unavailable between March 12, 2007 and June 19, 2007.

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92. Disciplinary Counsel filed a Formal Complaint on May 8, 2007 without ever taking Respondent's deposition.

G. Findings of Fact Applicable To Count 5.

93. Findings of Fact 56-92 are incorporated herein by reference.

94. The *King v. Rahrig* complaint alleged that Respondent was "licensed to practice law at all times relevant to this lawsuit." The complaint also alleged that: "Defendant [Mr. Rahrig] terminated the plaintiffs' services effective March 9, 2005. However, he allowed Legal Assistant Roger W. Knight to continue providing non-attorney legal support services until about June 1, 2005." These factual allegations were false.

95. The complaint asserted claims for monies due, breach of contract, and quantum meruit and alleged damages in the form of attorneys' fees and fees for "non-attorney legal support services." In light of the written fee agreement between Respondent and Mr. Rahrig and the circumstances of Respondent's removal from the *Rahrig v. Alcatel* case, these claims were frivolous.

96. The evidence presented did not establish by a clear preponderance that Respondent intentionally used a fictitious cause number on the *King v. Rahrig* complaint.

H. Findings of Fact Applicable To Count 6.

97. Findings of Fact 56-92 are incorporated herein by reference.

98. Respondent's July 22, 2005 Memorandum sent to the WSBA seeking to defer Disciplinary Counsel's investigation stated "I have a lawsuit pending on this matter as to a determination if there was a attorney-client relationship with Mr. Rahrig as to his Virginia Federal Case. His attorney in Virginia has denied an attorney client relationship even exists. I would ask that this matter be deferred, pending resolution of this issue." This response

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contained a false or misleading statement in that Mr. Levit, the attorney for Mr. Rahrig in Virginia, never denied the existence of an attorney client relationship between Mr. Rahrig and Respondent between March 9, 2005 and August 31, 2005.

99. Although the deferral request contained a false or misleading statement, the evidence presented did not establish by a clear preponderance that Respondent's sole or primary purpose in preparing and attempting to serve the *King v. Rahrig* complaint was to obstruct or delay the WSBA's investigation of Mr. Rahrig's grievance. The lawsuit, had it been prosecuted, would have indirectly established the existence of an attorney-client relationship between Respondent and Mr. Rahrig. In addition, it is a relatively common and acceptable practice to serve but not file a complaint. Finally, a possible alternative motive for the lawsuit against Mr. Rahrig was to preserve Respondent's potential claim to fees out of a recovery by Mr. Rahrig.

I. Findings of Fact Applicable To Count 7.

100. Findings of Fact 56-92 are incorporated herein by reference.

101. No evidence was presented of a written offer by Respondent to abandon his claim against Mr. Rahrig in return for withdrawal of Mr. Rahrig's grievance. Respondent wrote several emails referring to a telephone message he had left for Mr. Rahrig's lawyer, Mr. Funk, but Mr. Funk testified that the message did not contain a formal settlement offer but rather merely suggestions concerning a process for further discussions. Thus, the evidence presented did not establish by a clear preponderance that Respondent's motive in serving Mr. Rahrig with a frivolous lawsuit was to induce him to withdraw his grievance.

J. Findings of Fact Applicable To Count 8.

102. Findings of Fact 56-92 are incorporated herein by reference.

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103. After asking for additional time to respond to Mr. Rahrig's June 6, 2005 grievance and being given until July 20, 2005, Respondent instead – on the day before his response was due -- sued Mr. Rahrig and requested a deferral.

104. The July 22, 2005 Deferral Request was denied on August 15, 2005. Respondent sought review of this denial on September 15, 2005, but effectively withdrew the review request on August 23, 2005 when he responded to the grievance.

105. Respondent submitted a written response to Mr. Rahrig's grievance on August 23, 2005. The response submitted on that day was one page long and did not include any facts or circumstances that would not have been known to Respondent in early June 2005.

106. Respondent did not promptly respond to Mr. Rahrig's grievance. However, Respondent's failure to respond was excusable between June 21, 2005 and July 19, 2005 since he requested and was effectively granted an extension until July 19, 2005. Although his deferral request (submitted July 22, 2005) and later request to review the denial of that request (submitted August 15, 2005) were pending during much of the period between July 22, 2005 and the date Respondent did provide his August 23, 2005 response, this delay was not excusable because Respondent should not have waited until after his agreed extension expired to file the deferral request. There is no reason that the deferral request or the response, both of which were short simple documents based on facts well known to Respondent before June 2005, could not have been submitted promptly.

J. Findings of Fact Applicable To Count 9.

107. Findings of Fact 56-92 are incorporated herein by reference.

108. Respondent failed to appear for a deposition on four occasions prior to the filing of the Formal Complaint.

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109. At the hearing, Respondent contended that he was justified in refusing to appear for his first scheduled deposition for two reasons: (1) WSBA disciplinary counsel had previously taken the deposition of Mark Maurin without giving notice to Respondent and without providing Respondent a copy of the deposition transcript, and (2) Respondent believed WSBA disciplinary counsel was intending to harass him at the deposition based on prior conduct by disciplinary counsel in taking aggressive positions before the Washington Supreme Court regarding respondent's reciprocal suspension.

110. At the hearing, Respondent contended that he was justified in refusing to appear the second, third, and fourth times his deposition was scheduled because he believed the rulings rejecting his objections to the first deposition attempt had not made by the correct persons or entities and because disciplinary counsel had not served Mr. Scannell with the deposition notices.

111. Respondent also failed to produce any of the documents requested by the subpoena duces tecum. In an August 25, 2006 memo Respondent stated that: "I will send by regular mail, the documents we have left on the case. This file is rather small, as we sent it off to Mr. Rahrig per his request." No evidence was presented that Respondent ever did this.

112. The evidence presented did not establish by a clear preponderance that Respondent avoided service of a deposition subpoena.

J. <u>Findings of Fact Applicable To Count 10.</u>

113. Findings of Fact 1 – 38 are incorporated herein by reference.

114. Respondent's motions dated November 22, 2005, July 20, 2006, August 25, 2006, January 9, 2007, February 9, 2007, and February 21, 2007 were either frivolous, filed for the purpose of obstructing or delaying Disciplinary Counsel's investigation into the Rahrig

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grievance, or both. None of the procedural deficiencies alleged justified Respondent's failure to appear for a deposition or otherwise cooperate in the investigation.

115. These and other motions demonstrate a pattern of conduct by Respondent of asserting nonsubstantive and often frivolous procedural objections, using those objections as an excuse for failing to cooperate, filing multiple appeals of each adverse ruling denying the objections, and then asserting new and often-frivolous procedural objections to each order denying his appeal of the previous order.

K. Findings of Fact Concerning Aggravating Factors.

116. Respondent has been suspended from the practice of law on three prior occasions for violations of various Rules of Professional Conduct, including RPC 3.1 (bringing or asserting a frivolous proceeding or issue); RPC 3.3 (false statement of fact to a tribunal); RPC 3.4(d) (failure to comply with a legally proper discovery request); RPC 3.5(c) (conduct intended to disrupt a tribunal); RPC 8.4(b) (criminal acts that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer); RPC 8.4(c) (dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

117. Respondent acted with selfish and dishonest motives. Respondent was motivated by a desire to continue practicing law as regards *Rahrig v. Alcatel* in the hopes of obtaining a substantial contingent fee award, a desire to conceal his three-year Western District of Washington suspension by relying on the fact that the suspension order was sealed, and a desire to disobey and conceal the Supreme Court's March 9, 2005 reciprocal suspension order because he disagreed with it.

118. Respondent filed several pleadings during the course of this proceeding that exhibited dishonest motives. On several occasions Respondent filed statements in this matter

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stating or implying that he was out of the country when later evidence strongly suggested he was not. Respondent made one or more deceptive statements during the course of the hearing regarding whether a witness had properly been subpoenaed. This came about when Respondent stated he had subpoena'd Mr. Knight to testify at the hearing. When a declaration of service was later produced, it showed that Mr. Knight had been served that morning -- the day after Respondent had represented that Mr. Knight had been subpoena'd earlier. The declaration also contained inaccurate information regarding when and where Mr. Knight had been served. Finally, Respondent represented at the hearing that Mr. Knight refused to testify at the hearing because Mr. Knight believed the hearing officer had a conflict of interest. Respondent was granted a recess of the hearing to file a motion in Superior Court to compel Mr. Knight's attendance pursuant to ELC 10.13(e) and 4.7. The hearing officer made arrangements with the King County Superior Court presiding judge to facilitate a prompt hearing of this motion. Respondent never filed such a motion and never presented the testimony of Mr. Knight.

119. On October 16, 2006, Respondent filed a Petition for Writ of Mandamus in the King County Superior Court seeking a writ of mandamus directing WSBA disciplinary counsel "to refrain from conducting secret depositions concerning John Scannell or Paul King without giving notice to both John Scannell and Paul King." The Petition also sought a write "compelling [the then-Disciplinary Board Vice-Chair] to properly process motions for protective order on precharging depositions by either forwarding them to the chief hearing officer of the disciplinary board or to the disciplinary committee as a whole."

120. In July 2007, after the Hearing Officer was appointed in this matter, Respondent prepared a Second Amended Petition in this lawsuit naming the Hearing Officer as an additional defendant. Shortly thereafter, Respondent caused the Second Amended Petition to be served at

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the Hearing Officer's home late at night. Respondent did not serve any of the other named defendants with the Second Amended Petition.

121. At the hearing, Petitioner was asked to explain the basis for suing the hearing officer in light of the fact, agreed to by Petitioner, that all of the conduct giving rise to the Petition had occurred before the hearing officer's appointment to this matter. Respondent gave the following explanation:

> "Well, you're a party to the Bar, and you know, we thought that everybody included – and besides, it really isn't a process as we have pointed our in our brief, it's the charging formula that you have. And once you get charged, of course, you have a problem. But you're considering enhanced charges based upon our due process arguments, really . . . I mean, the question is – it really isn't a question if you're a necessary party or aren't. And you practice law. There's a way of joining and non-joining people, right? I mean, you could do that. The Bar didn't do it, right? They had the duty, obligation, correct? I mean, they're practicing in the area of discipline. So we know kind of the joinders that . . . And that's nothing against [disciplinary counsel] or anything, it's just that those issues are litigated. When you guys talk about all these ELC's and everything, to be honest, you know, I'm not as familiar as you by far in charging counts and all that stuff. I have no doubt that when they're much more . . . But that's our position, and that's what your counsel said. So your counsel is your representative. If he didn't do something for you, I mean, that's your complaint with him, not with me, right?

122. On August 24, 2007, the Superior Court Petition was dismissed for lack of subject matter jurisdiction on the ground that it concerned matters within the authority of the WSBA. Petitioner then appealed to the Washington Court of Appeals.

123. In December 2007, Respondent filed a witness list for the hearing. On the list he included the hearing officer, six employees in Disciplinary Counsel's office, the hearing officer, and thirteen members of the Disciplinary Board. Respondent did not have a good-faith intention to call many of these individuals as witnesses, and appears to have included their names on his witness list purely for harassment purposes.

124. In March 2008, shortly before the hearing was to commence, Respondent filed a motion asking the hearing officer to recuse himself on the grounds that Respondent had sued

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him in July 2007 and that the WSBA General Counsel had represented both the hearing officer and Disciplinary Counsel in this lawsuit.

125. When the motion was denied, Respondent filed a motion with the Chief Hearing Officer asking for removal of the hearing officer. When this was denied, Respondent filed a Bar grievance against the hearing officer. Roger Knight, Respondent's legal assistant, and John Scannell, Respondent's sometime lawyer, also filed Bar grievances against the hearing officer for denying motions to strike them from the witness list in Respondent's bar hearing. When a Conflicts Review Officer appointed to review them found these grievances unmeritorious, Respondent and Mr. Knight filed an action in the Washington Supreme Court against both the hearing officer and the Conflicts Review Officer.

126. Between the filing of the Formal Complaint and the hearing, Respondent made approximately seventeen separate efforts (including appeals) to halt or delay the hearing.[3] While some of these had merit, most did not and many were frivolous. These efforts succeeded in causing some delay, but even where they did not succeed they wasted substantial resources and time.

127. Respondent committed multiple violation of the RPC.

128. After filing of the formal complaint, Respondent continued to treat the disciplinary proceeding as a "cat-and-mouse" game by failing to cooperate in post-complaint discovery, failing to comply with the hearing officer's February 27, 2008 Order, and repeatedly waiting until the last minute to raise objections that could have been raised months earlier.

129. Respondent has refused to acknowledge the wrongful nature of his conduct.

130. Respondent has substantial experience in the practice of law.

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131. Respondent has engaged in illegal conduct through his violations of RCW 2.48.180 (unlawful practice of law).

III. CONCLUSIONS

Any conclusions under this section that are later found to be findings of fact should be treated as such. *Redmond v. Kezner*, 10 Wn.App. 332, 343, 517 P.2d 625 (1973).

A. Conclusions Concerning Violations.

The hearing officer finds that Disciplinary Counsel proved the following:[4]

132. Disciplinary Counsel proved Count 1 by a clear preponderance of the evidence. Respondent violated RPC 8.4(*l*) (through violation of a duty imposed by ELC 14.1(c) by failing to notify Mr. Rahrig, Mr. Levit, or opposing counsel in *Rahrig v. Alcatel* of his March 9, 2005 suspension from the practice of law and his inability to represent Mr. Rahrig between March 9, 2005 and June 7, 2005.

133. Disciplinary Counsel proved portions of Count 2 by a clear preponderance of the evidence. Respondent (or a person operating under his direction and control) informed counsel for Alcatel that Respondent was "taking a leave," and asked counsel for Alcatel to begin sending courtesy copies of pleadings to Mr. Scannell rather than to Respondent. However, Respondent never took a significant leave. This email, as well as Respondent's conduct throughout March, April, and May 2005 appears designed to conceal the fact Respondent was continuing to represent Mr. Rahrig, and was therefore deceitful and in violation of RPC 8.4(c).

134. Disciplinary Counsel proved portions of Count 3 by a clear preponderance of the

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[3] References to these attempts can be found at Bar File ("BF") 54, 65, 75, 78, 86, 100, 119, 134, 146, 166, 171, 176, 194, 197, 200, 201, and 205.

[4] All references herein are to the RPC in effect at the time of the misconduct at issue.

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evidence. Respondent stated in a sworn affidavit of compliance as required by ELC 14.3 that he "had no active clients at the close of March 9, 2005 . . ." when Mr. Rahrig was clearly his client on and after this date. Even if Respondent intended to stop representing Mr. Rahrig at the time he made this statement, he did not in fact do so, and he took no action to submit a revised ELC 14.3 affidavit. Thus, Respondent violated RPC 8.4(*l*) (through violation of a duty imposed by ELC 14.3) by submitting a false or misleading Affidavit of Compliance.

135. Respondent contended he did not practice law in Washington in connection with *Rahrig v. Alcatel.* In essence, he contends that his actions in this case after March 9, 2005 constitute either the practice of law in Virginia (which he contended this tribunal would have no jurisdiction over) or acts by a "private citizen" that fall short of the practice of law. I have concluded that both arguments must be rejected.

136. First, I find that Respondent engaged in the practice of law in Washington with regard to his representation of Mr. Rahrig in *Rahrig v. Alcatel.* The essence of practicing law in a particular jurisdiction is having systematic contact with a client located in that jurisdiction. *Compare Birbrower et. al. v. Superior Court*, 949 P.2d 1 (Cal. 1998)("the primary inquiry is whether the unlicensed lawyer engaged in sufficient activities in the state, or created a continuing relationship with the California client that included legal duties and obligations") *with Estate of Condon v. McHenry*, 76 Cal.Rptr.2d 922 (Cal. App. 1998)(advising Colorado executor about California estate not practice of law in California because client not located there); *see also Ranta v. McCarney*, 391 N.W.2d 161 (N.D. 1986)(recognizing importance of location of client). The practice of law in a state includes giving legal advice while physically located in that state, even if the advice pertains to the law of another jurisdiction. *Kernnedy v. Montgomery County Bar Ass'n*, 561 A.2d 200 (Md. 1989), *Mahoning County Bar Ass'n v.*

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Harpman, 608 N.E.2d 872 (1993). Indeed, in *Estate of Condon*, the Court stated that the purpose of a state's unauthorized practice prohibition is to protect citizens of that state, making the location of the client of paramount importance. Thus, Respondent engaged in the practice of law in Washington by counseling Mr. Rahrig, a Washington resident, in the State of Washington even though that counseling related to a lawsuit pending in Virginia.

137. Respondent's second argument is rejected because the activities he engaged in – including advising a client on proper discovery answers, devising tactics for offensive and defensive discovery, and developing strategies in connection with pretrial motions – are clearly within GR 24's definition of the practice of law. Entering a formal notice of appearance or filing pleadings are not required. Moreover, even if Respondent's services on behalf of Mr. Rahrig could have been performed by a nonlawyer, suspended lawyers are subject to particular scrutiny in this regard and may not provide services that are sometimes performed by nonlawyers, where such services are generally recognized as within the practice of law. "A suspended lawyer will not be heard to say that services recognized as within the practice of law were performed in some other capacity when he is called to account." *Committee on Professional Ethics and Conduct of Iowa State Bar Ass'n v. Gartin*, 272 N.W.2d 485, 488 (Iowa, 1978), *quoting State ex rel. Nebraska State Bar Association v. Butterfield, 172 Nebraska 645, 111 N.W.2d 543.546 (1961); see also In Re Jorissen*, 391 N.W.2d 822 (Minn. 1986)(suspended lawyers may not perform law related activities that can, under certain circumstances, be performed by nonlawyers if such activities involve professional expertise or are traditionally performed by lawyers). Finally, I find that although some of the contacts with Mr. Rahrig and Mr. Levit appear to have come from Mr. Knight, Respondent's legal assistant, Mr. Knight was acting under Respondent's supervision and therefore Mr. Knight's activities

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also constitute the unauthorized practice of law by Respondent. Any other rule would allow a suspended lawyer to continue practicing law by simply diverting communications through a legal assistant.

138. For these reasons, I find that Disciplinary Counsel proved Count 4 by a clear preponderance of the evidence. Respondent violated RPC 5.5(e), RPC 8.4(b) (through violation of RCW 2.48.180), RPC 8.4(*l*) (through violation of a duty imposed by ELC 14.2), and RPC 8.4(j) by continuing to engage in the practice of law after the March 9, 2005 order of suspension, and by failing to take the steps necessary to avoid any reasonable likelihood that anyone would rely on him as a lawyer authorized to practice law.

139. Disciplinary Counsel proved portions of Count 5 by a clear preponderance of the evidence. Respondent violated RPC 3.1 and RPC 8.4(c) by delivering a summons and a complaint to Mr. Rahrig that contained frivolous claims.

140. Disciplinary Counsel did not prove Count 6 by a clear preponderance of the evidence.

141. Disciplinary Counsel did not prove Count 7 by a clear preponderance of the evidence.

142. Disciplinary Counsel proved portions of Count 8 by a clear preponderance of the evidence. Respondent violated RPC 8.4(*l*) (through violation of a duty imposed by ELC 5.3(e)) by failing to promptly respond to requests for a response to Mr. Rahrig's grievance.

143. Regarding Count 9, Comment [4] to RPC 8.4 states that "a lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists." Although it is a close question, I find that Disciplinary Counsel did not prove by a clear preponderance of the evidence that Respondent lacked a good faith believe that he was not

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required to attend his first scheduled deposition. However, Respondent's stated grounds for refusing to attend the three subsequently scheduled depositions were frivolous and were therefore not asserted in good faith. Even if the rules were unclear regarding exactly which WSBA officer should be deciding which motion, this did not provide Respondent a valid excuse to simply refuse to make himself available for a deposition concerning Mr. Rahrig's grievance and thereby violate his duty to cooperate in the investigation of the grievance. Respondent appears to have viewed his response to the WSBA's investigation more like a cat-and-mouse game than like a serious obligation to cooperate and thereby further the obligations of every lawyer to cooperate in protecting the public against lawyer misconduct. Thus, I find that Disciplinary Counsel did prove by a clear preponderance of the evidence that Respondent's refusal to appear for his second, third, and fourth scheduled depositions, as well as Respondent's failure to provide documents called for in Disciplinary Counsel's subpoena *duces tecum*, violated RPC 8.4(*l*) (through violation of duties imposed by ELC 5.3 and 5.5).

144. Disciplinary Counsel proved Count 10 by a clear preponderance of the evidence. Respondent violated RPC 3.1 and RPC 8.4(*l*) (through violation of duties imposed by ELC 5.3 and 5.5) by filing the motions and appeals found to be frivolous, and by engaging in the pattern of delay and noncooperation.

B. Conclusions Concerning Sanction

145. A presumptive sanction must be determined for each ethical violation. *In re Anschell*, 149 Wn.2d 484, 502, 69 P.2d 844 (2003). The presumptive sanction should consider the ethical duty violated, the lawyer's mental state, and the extent of the harm caused by the misconduct. *Id.*

146. The following finding regarding Respondent's mental state applies to each of the

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below conclusions concerning sanctions. Respondent appeared generally to be in full possession of his mental faculties, although he sometimes acted confused during the course of the hearing. Also, Respondent, who appeared *pro se* at the hearing, was sometimes unable to supply a coherent explanation of the legal basis for positions that had been taken in briefs filed by him or on his behalf in this proceeding. However, Respondent did appear competent to ratify and adopt strategies pursued in pleadings bearing his signature or otherwise put forward in his defense.

147. The following standards of the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) are presumptively applicable in this case:

148. ABA Standards section 8.0 applies to the proven violations from Count 1 of the Formal Compliant. Disciplinary Counsel contended that the presumptive sanction for this Count is ABA Standards section 7.0, which pertains to unauthorized practice of law. However, I find that the more appropriate sanction is 8.0, which pertains to violation of prior discipline orders. By failing to comply with the applicable requirements imposed on a lawyer suspended from the practice of law (the most important of which is the duty to inform clients), Respondent violated the terms of the Washington Supreme Court's March 9, 2005 Order of Suspension. This caused potentially serious harm to Mr. Rahrig, who unwittingly allowed himself to be represented during a critical time in a substantial lawsuit by a lawyer suspended from the practice of law due to professional misconduct. There was no evidence presented that Mr. Rahrig's interests in *Rahrig v. Alcatel* were actually harmed due to Respondent's involvement (although he did lose the case), but this may have been because of the involvement by co-counsel Jay Levit. The presumptive sanction for Respondent's violation of RPC 8.4(*l*) as

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charged and proven in Count 1 is disbarment under ABA Standards section 8.1.

149. ABA Standards section 5.1 applies to the proven violations from Count 2 of the Formal Compliant. While the March 9, 2005 deceitful request to opposing counsel to send courtesy copies to Mr. Scannell rather than to Respondent did no demonstrable harm since neither had formally appeared for Mr. Rahrig, it does adversely reflect on Respondent's fitness to practice law. The presumptive sanction for Respondent's violation of RPC 8.4(c) as charged and proven in Count 2 is reprimand under ABA Standards section 5.13.

150. ABA Standards section 8.0 applies to the proven violations from Count 3 of the Formal Compliant. Disciplinary Counsel contended that the presumptive sanction for this Count is ABA Standards section 7.0, which pertains to unauthorized practice of law. However, I find that the more appropriate sanction is 8.0, which pertains to violation of prior discipline orders. By failing to comply with the applicable requirements imposed on a lawyer suspended from the practice of law, including the obligation to certify to the WSBA that the Suspension Order is being complied with, Respondent violated the terms of the Washington Supreme Court's March 9, 2005 Order of Suspension. Respondent's intentional misrepresentation to the WSBA caused injury or potential injury to the public, the legal system and the profession because it deceived the WSBA into believing that Respondent was complying with the terms of his suspension. The presumptive sanction for Respondent's violation of RPC 8.4(l) as proven in Count 3 is disbarment under ABA Standards 8.1(a).

151. ABA Standards section 8.0 applies to the proven violations from Count 4 of the Formal Compliant. Respondent's knowing violation of the Suspension Order by continuing to practice law obviously caused injury or potential injury to the public, the legal system, and the profession. Any other conclusion would render the disciplinary system meaningless. The

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presumptive sanction for Respondent's violation of RPC 5.5(e), RPC 8.4(*l*), and RPC 8.4(j) as proven in Count 4 is disbarment under ABA Standards section 8.1(a).

152. ABA Standards section 5.1 applies to the proven violations from Count 5 of the Formal Compliant. Preparing and serving a complaint containing false statement and frivolous claims for fees due – because Mr. Rahrig discharged Respondent after discovering Respondent was a suspended lawyer -- seriously adversely reflects on Respondent's fitness to practice law because of the disregard it shows for the client's rights and interests. The presumptive sanction for Respondent's violation of RPC 3.1 and RPC 8.4(c) as proven in Count 5 is disbarment under ABA Standards sections 5.11(b).

153. ABA Standards section 7.0 applies to the proven violations from Count 8 of the Formal Compliant. Although the ABA Standards do not explicitly provide for presumptive sanctions for violation of an attorney's duty to cooperate in an investigation of a professional misconduct grievance, this a duty owed due to Respondent's status as a professional. I find that Respondent's delay caused potential injury to Mr. Rahrig and to the legal system, but not serious injury given the relatively short length of the unexcused portion of the delay. The presumptive sanction for Respondent's violation of RPC 8.4(d) and RPC 8.4(*l*) as proven in Count 8 is suspension under ABA Standards section 7.2.

154. ABA Standards section 7.0 applies to the proven violations from Count 9 of the Formal Compliant. Although the ABA Standards do not explicitly provide for presumptive sanctions for violation of an attorney's duty to cooperate in an investigation of a professional misconduct grievance, this a duty owed due to Respondent's status as a professional. While Respondent's multiple refusals to appear for a deposition caused injury, they did not cause serious injury given Disciplinary Counsel's ability to bring a Formal Complaint and prosecute

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the matter without ever being allowed to depose Respondent. Factored into this conclusion is the fact that not all of Respondent's pre-charging motions and objections were frivolous, although they do demonstrate a pattern of delay and obstruction when viewed together. The presumptive sanction for Respondent's violation of RPC 8.4(d) and RPC 8.4(*l*) as charged and proven in Count 9 is suspension under ABA Standards section 7.2.

155. ABA Standards sections 6.2 and 7.0 apply to the proven violations from Count 10 of the Formal Compliant. Although the ABA Standards do not explicitly provide for presumptive sanctions for violation of an attorney's duty to cooperate in an investigation of a professional misconduct grievance, this a duty owed due to Respondent's status as a professional. I find that Respondent's frivolous motions and appeals caused serious harm to the public and the legal system because in addition to devouring an unreasonably large amount of time and money, they delayed the WSBA's investigation into Mr. Rahrig's grievance by nearly a year and thereby allowed Respondent to continue practicing law for a substantial length of time. The presumptive sanction for Respondent's violation of RPC 3.1 and RPC 8.4(*l*) as proven in Count 10 is disbarment under ABA Standards sections 6.21 and 7.1.

156. When multiple ethical violations are found, the "ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations." *In re Petersen*, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993). This is particularly true here because a reprimand or a further suspension would be a fruitless and inappropriate sanction for failing to comply with the terms of a prior suspension.

157. Based on the Findings of Fact and Conclusions of Law and the application of the ABA Standards, the presumptive sanction is disbarment.

158. As demonstrated by the Findings of Fact, the following aggravating factors set

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forth in Section 9.22 of the ABA Standards are applicable in this case:

(a) prior disciplinary offenses;
(b) a pattern of misconduct;
(c) multiple offenses;
(d) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
(e) deceptive practices during the disciplinary process;
(f) refusal to acknowledge wrongful nature of conduct;
(g) substantial experience in the practice of law; and
(h) illegal conduct.

159. I believe that two additional aggravating factors should be considered:

(a) By suing various WSBA officials and the hearing officer in Superior Court, by serving the hearing officer with this lawsuit at his home late at night, by naming six WSBA employees, thirteen Disciplinary Board members, and the hearing officer as witnesses at his hearing, and by filing a Bar Grievance against the hearing officer for refusing to recuse himself because Respondent had sued him and named him as a witness, and by suing the hearing officer in the Washington Supreme Court during the pendency of the hearing in this matter, Respondent appears to have engaged in an effort to intimidate the WSBA and others involved in the disciplinary process, or at least to wear these individuals down. Such conduct is well outside the bounds of asserting or protecting legitimate rights or arguments, and should be considered as an aggravating factor.

(b) The contents of Mr. Rahrig's June 1, 2005 email (see Finding No. 57) strongly suggest that Respondent's client, Mr. Rahrig, felt he was being threatened or harassed by Respondent or by persons acting under his direction and control. This email was sent shortly after Mr. Rahrig discharged Respondent, and immediately after Respondent filed a grievance against Respondent. The fact Respondent's client appears to have felt threatened or harassed should be considered as an aggravating factor.

160. Although none of the mitigating factors set forth in Section 9.32 apply to this case, there are two potentially mitigating factors that should be considered due to the unique nature of this matter.

(a) As described in Finding No. 7, Respondent's reciprocal suspension lasted approximately six weeks longer than it should have due to a clerical error on the part of the Supreme Court and despite Respondent's prompt efforts to correct this error. I find, however, that this is not an appropriate mitigating factor because Supreme Court orders regarding disciplinary matters cannot be ignored or skirted even if they are based on clerical errors.

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(b) Respondent testified that Mr. Chris Sutton on the WSBA Ethics Hotline told him that his actions were "OK." Although having potential conduct affirmed by the WSBA Ethics Hotline could be a mitigating factor, I find that it should not be in this case. This is because, after hearing the testimony of Respondent and of Mr. Sutton, I find that Respondent only received an "OK" because he did not report to Mr. Sutton that he would continue to be actively involved in the case during his suspension. Mr. Sutton's testimony made clear that Mr. Sutton would never have advised Respondent that he could retain any level of activity as a lawyer or advisor in *Rahrig v. Alcatel* during his suspension.

Recommendation.

161. Based on the ABA Standards and the applicable aggravating and mitigating factors, the hearing officer recommends that Respondent Paul H. King be disbarred.

162. The Hearing Officer further recommends that Respondent be required to pay restitution in the amount of $615 to Kurt Rahrig with interest at the rate of 12% per annum beginning October 31, 2005.

Dated September 18, 2008.

David M. Schoeggl, WSBA No. 13638
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the ~~FOF+COL~~ HO's Recommendation to be delivered to the Office of Disciplinary Counsel and to be mailed to Paul King, ~~Respondent~~/Respondent's ~~Counsel~~ at POB 3444, Seattle WA 98114, by ~~Certified~~/First class mail, postage prepaid on the 19 day of Sept, 2008.

Clerk/Counsel to the Disciplinary Board

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APPENDIX B

FILED

FEB 02 2009

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re **PAUL H. KING,** Lawyer (WSBA No. 7370)	Proceeding No. 05#00118 DISCIPLINARY BOARD ORDER ADOPTING HEARING OFFICER'S DECISION

This matter came before the Disciplinary Board at its January 23, 2009 meeting, on automatic review of Hearing Officer David M. Schoeggl's decision recommending disbarment and restitution following a hearing.

Having reviewed the materials submitted by the parties, and the applicable case law and rules,

IT IS HEREBY ORDERED THAT the Hearing Officer's decision is adopted[1].

Dated this 30th day of January, 2009.

William J. Carlson, Chair
Disciplinary Board

[1] Those voting were: Anderson, Bahn, Barnes, Carlson, Cena, Coppinger-Carter, Greenwich, Handmacher, Hazelton, Meehan, and Ureña. Board member Fine recused from participation in this matter. Mr. Fine was not present during the deliberations or vote.

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CERTIFICATE OF SERVICE

I certify that I caused a copy of the DBoard Order
to be delivered to the Office of Disciplinary Counsel and to be mailed
to Paul King, ~~Respondent~~/Respondent's Counsel
at ~~PO~~ PO Box 3900, Seattle, WA 98124, by ~~Certified~~/First class mail,
postage prepaid on the 2 day of February, 2009.

Clerk/Counsel to the Disciplinary Board

Sent 2/3/09 by 1st class/certified mail to Paul King POB 3444 Seattle, WA 98114